

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

05 10544 JLT

FIRST, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TIMOTHY MCARTHUR,

Defendant.

Civil Action No.

RECEIPT # 62945

AMOUNT \$ 250.00

SUMMONS ISSUED 3

VERIFIED COMPLAINT

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY. CLK. M.P.

DATE 3/22/05

FIRST, LLC a/k/a First-Racing.Net ("FIRST") alleges for its complaint against
Timothy McArthur ("McArthur") as follows:

MAGISTRATE JUDGE JGD

INTRODUCTION

1. In this action FIRST asks this Court to, among other things, enjoin McArthur's malicious distribution over the Internet of highly confidential source code or object code for FIRST's copyrighted computer game, NASCAR® Racing 2003 Season ("NASCAR® 2003").¹ McArthur's threat to do so, made by posting to an Internet bulletin board on or about March 19, 2005, is his latest attempt to extort FIRST into abandoning its attempts to discourage McArthur and others from publishing over the Internet "hacked" derivative versions of NASCAR® 2003 in violation of FIRST's copyrights and United States law.²

2. Indeed, as alleged in more detail below, McArthur and third parties with

¹ "Source code is the language in which a computer program is written that humans can understand. Object code is the machine language of a computer program A computer application program is provided in object code so that it can be used but cannot be understood by [most] humans." Technical, Inc. v. ALLPAX Products, 1990 WL 41924 at *4 n.5 (E.D. La. March 28, 1990) (injunction against threatened use or distribution of source code).

² A copy of McArthur's posting is attached as Exhibit A to the Affidavit of Irwin B. Schwartz in Support of Ex Parte Application For Temporary Restraining Order and Expedited Discovery ("Schwartz Aff.") submitted herein.

whom he worked, reverse engineered NASCAR® 2003 to develop a software application that automatically creates derivative versions of NASCAR® 2003 (the "Hack Tool"). Then McArthur included that Hack Tool as part of a free download "executable" program published on his Internet website to help untold numbers to create McArthur's own derivative version of NASCAR® 2003. According to McArthur himself, "tens of thousands" have downloaded files from his website to create unlicensed derivative versions of NASCAR® 2003.

3. McArthur's threatened publication of FIRST's highly confidential and copyrighted source code is ample ground for this Court to issue an injunction. When previously presented with such behavior, this Court enjoined the Internet publication of "hacking" computer applications designed to circumvent computer software protections in abuse of plaintiff's copyrights. See Microsystems Software, Inc. v. Scandinavia Online AB, Civ. Action No. 00-10488-EFH (D. Mass. Mar. 17, 2000) (TRO against distribution over Internet of "cphack.exe" created by reverse engineering of "CyberPatrol" software). Likewise, other courts have made short work of computer hackers who invade software publishers' copyrights to distribute over the Internet an application to "improve" software games. See Davidson & Assoc., Inc. v. Internet Gateway, Inc., 334 F. Supp. 2d 1164, 1181 (E.D. Mo. 2004) (finding on identical license terms as here that defendants waived "fair use" defense and violated copyright and Digital Millennium Copyright Act protections).

4. Beginning in February 2005, FIRST asked McArthur and others to stop creating and publishing over the Internet derivative versions of NASCAR® 2003. By early March 2005, many such persons had agreed to do so. McArthur, however,

refused to acknowledge FIRST's exclusive rights to publish derivative versions of NASCAR® 2003 or that he had violated the applicable license prohibitions against reverse engineering NASCAR® 2003. Indeed, to the degree his threats are to publish the NASCAR® 2003 source code, it demonstrates that he violated the license restrictions against de-compiling FIRST's software.³ Accordingly, FIRST brings this action for emergency, preliminary and permanent injunctive relief against McArthur's violations of the Copyright Act, 17 U.S.C. § 501.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

6. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1400(a) because FIRST is located here and McArthur's violation and threatened violation of FIRST's copyrights is knowingly causing injury here. Indeed, McArthur is a former employee of FIRST's predecessor in interest, which was based in Massachusetts, and McArthur engaged in negotiations by telephone and electronic mail with FIRST and its counsel with full knowledge that McArthur was communicating into Massachusetts.

THE PARTIES

7. Plaintiff FIRST is a corporation limited liability company organized and existing under the laws of the state of Delaware, with a principal place of business in Bedford, Massachusetts. FIRST is the owner of NASCAR® 2003, which is the industry-leading car racing simulation game software. FIRST's president is David Kaemmer

³ Human readable source code is translated into machine readable object code through compiling and assembly. *Williams v. Arndt*, 626 F. Supp. 571, 577 (D. Mass. 1985) (Mazzone, J.). Conversely, object code is converted into human readable source code through de-compiling or dis-assembly.

("Kaemmer").

8. On information and belief McArthur resides in Concord, California. On information and belief, McArthur developed a software application that copies NASCAR® 2003 into the user's computer, modifies NASCAR® 2003 using the Hack Tool and then permits the user to save a copy of that derivative version of NASCAR® 2003 to his or her computer. Upon information and belief, McArthur also published on the Internet a derivative version of NASCAR® 2003.

FIRST'S COPYRIGHTS

9. FIRST is the owner of all the intellectual property rights in NASCAR® 2003, including all copyrights whether registered or unregistered. NASCAR® 2003 is a derivative work of NASCAR® Racing 2002 Season ("NASCAR® 2002"), which is registered with the United States Copyright Office under number PA-1-038-304. FIRST's copyright registration of NASCAR® 2003 is pending. Copies of the certificate of registration of NASCAR® 2002 and the copyright registration application for NASCAR® 2003, which is pending, are attached hereto as Exhibit A. Excerpts of the Assignment Agreement by which FIRST obtained the NASCAR® 2003 copyrights are attached hereto as Exhibit B.

10. The registration is in full force and effect and covers nearly all aspects of FIRST's game as it is distributed in the marketplace, including, without limitation, (a) all of the human and machine readable computer code and any other data distributed on CD-ROM with each game, (b) all graphical and textual elements of the screens that appear in each game when the same is executed on a personal computer, (c) all graphical and textual elements of manuals and other documents distributed with the

games, and (d) all motion picture and sound recordings, and other audio visual elements.

NASCAR® 2003

11. NASCAR® 2003 was developed by FIRST's predecessor-in-interest, Papyrus Design Group, Inc. ("Papyrus"), and released by Papyrus and its parent company Sierra On-Line, Inc. ("Sierra") in February 2003. Kaemmer is a founder of Papyrus and, until May 2004, was an employee of Papyrus.

12. Papyrus and Kaemmer developed NASCAR® 2003 through tremendous effort and at great expense. NASCAR® 2003's game designers, artists, producers and programmers strove to create a software game that appealed to a large number of players and maintain the interest of those players for many years.

13. NASCAR® 2003 was sold on CD-ROMS for use on personal computers. NASCAR® 2003 may be played by a single player, or with other players through a local network, directly between two computers connected by cables or modem, or over the Internet.

14. NASCAR® 2003 is widely regarded as the most realistic computer car racing simulation ever created and numerous NASCAR drivers have used it as a training tool. NASCAR® 2002 and NASCAR® 2003 respectively won the gamespy.com Racing Simulation of the Year award.

15. In early May 2004, Papyrus ceased operations. Papyrus and Sierra sold their copyrights in the NASCAR® 2003 software to FIRST on May 28, 2004.

THE LICENSE AGREEMENT

16. Upon installation of NASCAR® 2003 on a user's computer, the software presents the user with an End User License Agreement ("EULA"). The user is asked to accept or reject the license terms:

do you accept all the terms of the preceding license agreement? If you choose No, the setup will close. To install NASCAR Racing 2003 Season, you must accept this agreement.

The user then may choose, "back", "yes," or "no". The program will only install on the user's computer if the user elects "yes." If the user does not so accept the EULA, NASCAR® 2003 will not install on the computer and it may not be used. A true and correct copy of the NASCAR® 2003 EULA is attached as Exhibit C.

17. If accepted by a user, the EULA permits the user to install NASCAR® 2003 on a home, portable or business computer, but only permits use of the single copy of game software in single player or multi-player mode. Exhibit C, ¶ 1.

18. The EULA explicitly provides that the user may not use NASCAR® 2003 to observe the machine readable software code or otherwise reverse engineer the software:

3. Responsibilities of End User.

A. Subject to the Grant of License hereinabove, you may not, in whole or in part, copy, photocopy, reproduce, translate, reverse engineer, derive source code, modify, disassemble, decompile, create derivative works based on the Program. . . .

(Emphasis added).

19. On information and belief, McArthur installed the NASCAR® 2003 game

on a computer and accepted the NASCAR® 2003 EULA.⁴

NASCAR® 2003'S SECURITY MEASURES

20. NASCAR® 2003 includes an application called Securm to protect the software from piracy. In effect, Securm creates a lock and key that only allows the user to run NASCAR® 2003 if the NASCAR® 2003 CD-ROM is in the computer's disc drive. This application protects against piracy by seeking to prevent the use of illicit copies or altered versions of the software.

DEVELOPMENT OF THE HACK TOOL

21. Among other things, NASCAR® 2003 contains executable files, which are denominated by the suffix "exe". An executable file contains both instructions to the computer in the form of machine code and data upon which some of those instructions operate. Upon installation of NASCAR® 2003, NR2003.exe is installed on the user's computer hard drive.

22. NR2003.exe contains machine-readable software code that implements many complex physics formulas. NR2003.exe also contains data that is run through these physics formulas. These physics formulas are at the core of the creative expression that is NASCAR® 2003 and it is a large part of the creative value manifested in the software code. With each previous new release of the NASCAR® series, Papyrus programmers improved the physics formulas and changed the data to make the simulation more realistic and more exciting for the user.

23. This physics formula data is part of the NR2003.exe file and is stored at fixed locations within that computer file. Each time the NASCAR® 2003 program is run,

⁴ To the extent McArthur did not accept the EULA or otherwise obtained and used a pirated copy of NASCAR® 2003, he did so in violation of FIRST's copyrights by making unlicensed use of the software.

the physics formula data values are installed into the same locations in the computer's electronic memory.

24. Upon information and belief, through explicitly prohibited reverse engineering either the NR2003.exe file and/or using tools that examine the computer's memory as NR2003.exe is running, McArthur and/or third parties located the physics formula data in NR2003.exe file and determined the meaning.

25. Using the information illicitly acquired through such reverse engineering, McArthur and/or third parties developed the Hack Tool, which is a computer program that identifies and locates within NR2003.exe of the physics formula data, extracts this proprietary data from NR2003.exe, modifies the data, reads the modified data back into NR.2003.exe from the disk, and then overwrites NR2003.exe's data with the modified data.

MCARTHUR'S DISTRIBUTION OF HIS OWN NASCAR® 2003 MODIFICATION TOOL

26. Upon information and belief, McArthur used the Hack Tool to manipulate the data in the NR2003.exe physics model to develop derivative versions of NASCAR® 2003 that contained different cars and racing tracks.

27. In order to propagate his own modified version of NASCAR® 2003, McArthur created and published from his Internet website for the public to download an executable application called GTS_Series_v2.0.exe ("GTS.exe"). The GTS.exe copies NR2003.exe (contained within NASCAR ® 2003), modifies the physics models, and allows the user to save the modified version as "NR2003_GTS_Touring_Series_v2.exe" ("NR2003_GTS.exe"). Thereafter, if the user runs NR2003_GTS.exe, it is an unlicensed derivative of NASCAR® 2003 that is more than 99 percent original

NR2003.exe code and less than one percent modified code.

28. NR2003_GTS.exe's operation is dependent upon illegally copying NASCAR® 2003.

29. Based on FIRST's observations of McArthur's website, McArthur allowed Internet visitors to download and install the GTS.exe to the visitor's computer.

30. McArthur's download instructions advise that the GTS.exe causes the user to make a copy of the NR2003.exe, which violates the EULA. In fact, McArthur warns that: "The user of this software takes all responsibility of creating a copy of the Nascar Racing 2003 Season executable file and the changes made to the file." A copy of the instructions for use of GTS.exe is attached hereto as Exhibit D.

31. As a matter for software operation logic, McArthur illicitly copied the NR2003.exe when he created GTS.exe and every time he ran GTS.exe. Further, every time a visitor to McArthur's website downloads and runs GTS.exe, that user makes a copy of the NR2003.exe which is then modified and saved as NR2003_GTS.exe.

32. Based on McArthur's own March 16, 2005 Internet bulletin board posting, there is the potential that GTS.exe will be downloaded by the thousands:

I know that my little thingies have been downloaded in the thousands, and my N3 [prior version of NASCAR® 2003] tracks were downloaded in the tens-of-thousands (and still going I might add), and I dont[sic] doubt at all that TPTCC and PWF mods were downloaded in the tens-of-thousands or more.

A copy of this posting is attached to the Schwartz Aff. as Exhibit B.

FIRST'S ATTEMPTS TO RESOLVE ITS DISPUTE WITH MCARTHUR

33. In February 2005, FIRST learned of the Hack Tool's existence. FIRST then informally contacted those it believed were responsible for the Hack Tool's creation

to ask that they cease using it to create derivative versions of NASCAR® 2003 in violation of FIRST's copyrights.

34. Upon information and belief, some individuals who obtained the Hack Tool voluntarily complied with FIRST's informal requests.

35. On February 28, 2005, McArthur expressed on a number of Internet message board forums that he disagreed with FIRST's positions and he also released a new version of his GTS.exe on his website.

36. On March 3, 2005, Kaemmer posted a letter to the "community" on FIRST's website that explained FIRST's position on the use of the Hack Tool. In that letter, Kaemmer advised the community that FIRST intended to take legal action against anyone who violated FIRST's intellectual property rights.

37. Evidently, McArthur took offense that Kaemmer referred to the modifications to the NR2003.exe as "hacked executables," and the tools they used as "tools intended to hack our executables." McArthur began referring to FIRST in his Internet postings as "FIRST.Raping.net."

38. On March 4, 2005, Kaemmer sent an email to McArthur (and others) requesting that he remove any and all content posted on the Internet that infringes on FIRST's copyrights or that violates the NASCAR® 2003 EULA.

39. On March 7, 2005, FIRST's corporate counsel sent McArthur a cease and desist letter relating to GTS.exe and other programs like it as well as McArthur's use of the Hack Tool. Between March 7, 2005 and March 16, 2005, counsel for FIRST unsuccessfully attempted to resolve the dispute between FIRST and McArthur. Those negotiations led to McArthur's "temporary" removal of the GTS.exe from his website, but

his refusal, among other things, to acknowledge FIRST's ownership in the derivative versions of NASCAR® 2003 created by McArthur's executable, or that the use of that executable caused a violation of the EULA.

40. While FIRST pondered its options, on March 19, 2005 McArthur posted on an Internet bulletin board his version of the history of his negotiations with FIRST and stated "The TC and GTS physics installers may very well be back online soon if First does not respond." In the posting McArthur threatened to "publish" FIRST's code:

7) **1st Amendment Rights allow me to publish the code of "unsecure"** (there is no encryption of the NR2003.exe file), **and previously "public domain" files** (NR2003.exe files has been publicly altered for over 1 year now). *(Court ruling in the DVD-CCC v. Andrew Brunner, amongst other cases, confirms this).*

(Emphasis in original). A copy of this posting is attached to Schwartz Aff. As Exhibit A.

THE NEED FOR INJUNCTIVE RELIEF

41. NASCAR® 2003 object code is protected by copyright law and its source code is a highly confidential trade secret protected by the EULA and numerous other efforts by FIRST and its predecessors-in-interest to prevent its dissemination. McArthur's publication and distribution of the NASCAR® 2003 object code and source code would cause FIRST immediate, irreparable and incalculable injury.

42. As demonstrated by McArthur's March 19, 2005 Internet posting, he is aware of FIRST's copyrights in NASCAR® 2003 and his posting of the source code or object code therefore would be in knowing and willful violation of such rights.

43. A Temporary Restraining Order, and preliminary and permanent injunctive relief is necessary to protect FIRST's registered copyrights and to protect it against both actual and presumed irreparable harm.

CLAIM FOR RELIEF

COUNT I

(Copyright Infringement under the Copyright Act § 501(a))

44. FIRST realleges and incorporates by this reference the allegations contained in paragraphs 1 through 43 of this Complaint.

45. FIRST is the assignee of the registered copyright in NASCAR® 2002 and its derivative work, NASCAR® 2003.

46. McArthur's actions and threats constitute direct infringement of FIRST's exclusive right to reproduce and distribute copies of its copyrighted works.

47. McArthur's actions constitute a direct infringement of FIRST's exclusive right to prepare derivative works based upon its copyrighted works.

48. McArthur's actions constitute a direct infringement of FIRST's exclusive rights under copyright by contributing to the infringing activity of users so substantially as to be directly liable for the end-user's infringing activity.

49. McArthur's actions constitute contributory infringement of FIRST's exclusive rights under copyright because McArthur knew or should have known that his acts would induce, cause or materially contribute to the infringement by third parties of FIRST's exclusive rights under copyright.

50. McArthur's actions were a knowing, intentional and deliberate violation of FIRST's copyrights.

51. As a result of McArthur's infringements, FIRST has suffered and continues to suffer damages and irreparable injury.

PRAYERS FOR RELIEF

WHEREFORE, FIRST respectfully requests that this Court:

A. Issue a temporary restraining order enjoining McArthur and his agents and affiliates from publishing the source code or object code for NASCAR® 2003 or any derivative works thereof;

B. Issue preliminary and permanent injunctions enjoining McArthur and his agents and affiliates from

(i) Infringing FIRST's copyrights; and

(ii) Circumventing FIRST's copyright protection systems and distributing circumvention technology;

C. Requiring McArthur to deliver to FIRST all copies of material in his possession that infringe or violate any of FIRST's rights;

D. Enter judgment in favor of FIRST on Counts I and II;

E. Impose penalties for willful violation of the copyright laws; and

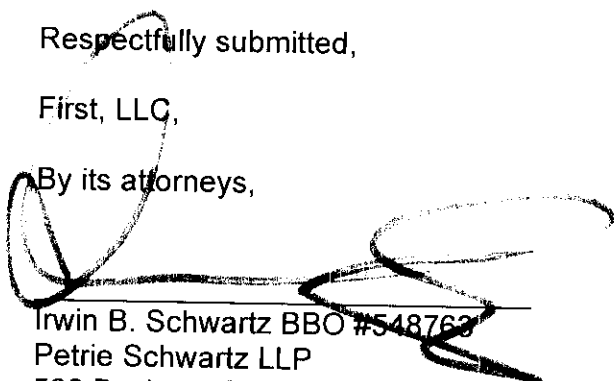
F. Order such further relief as the Court deems just and proper.

DATED: March 21, 2005

Respectfully submitted,

First, LLC,

By its attorneys,



Irwin B. Schwartz BBO #548763
Petrie Schwartz LLP
500 Boylston Street
Suite 1860
Boston, Massachusetts 02116
(617) 421-1800
(617) 421-1810 (fax)

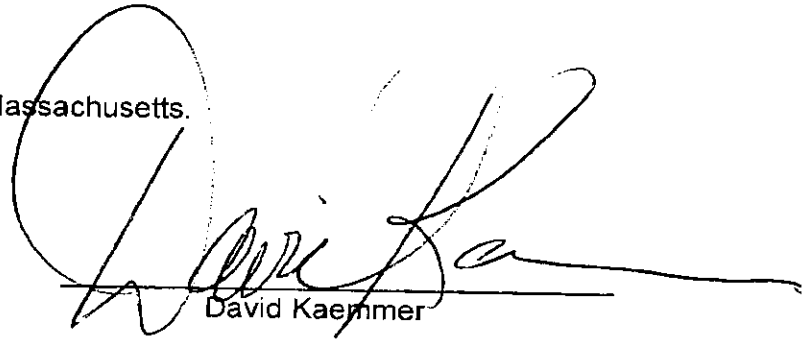
VERIFICATION

David Kaemmer hereby states:

1. I am President and Chief Executive Officer of FIRST, LLC
2. I have read the foregoing verified complaint, which I declare to be true and correct to the best of my knowledge, information and belief.

SWORN TO UNDER THE PAINS AND PENALTIES OF PERJURY UNDER THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS AND THE UNITED STATES OF AMERICA.

Executed on March 22, 2005 at Bedford, Massachusetts.



David Kaemmer

CERTIFICATE OF REGISTRATION

FORM PA

For a Work of the Performing Arts
UNITED STATES COPYRIGHT OFFICE

REGISTRATION

PA 1-038-304



#P0001038304#

EFFECTIVE DATE OF REGISTRATION

2 19 02

Month Day Year



OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

NASCAR RACING 2002 SEASON

PREVIOUS OR ALTERNATIVE TITLES ▼

NASCAR RACING; NASCAR RACING 2; NASCAR RACING 3; NASCAR RACING 4

NATURE OF THIS WORK ▼ See instructions

Audiovisual work

NAME OF AUTHOR ▼

a Sierra Entertainment, Inc.

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a

"work made for hire"?

☐ Yes☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ▶ U.S.A.

OR Domiciled in ▶

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

Entire computer program, including audio-visual displays, user manual and text and artwork on container

NAME OF AUTHOR ▼

b

Was this contribution to the work a

"work made for hire"?

☐ Yes☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ▶

OR Domiciled in ▶

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

c

Was this contribution to the work a

"work made for hire"?

☐ Yes☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR Citizen of ▶

OR Domiciled in ▶

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed. ▼

a YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

2002

This information must be given in all cases.

b DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month ▶ February Day ▶ 15 Year ▶ 2002

United States of America

Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Sierra Entertainment, Inc.
3060 139th Avenue SE, #500
Bellevue, WA 98005

See instructions before completing this space.

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

FEB 15, 2002

ONE DEPOSIT RECEIVED

FEB 15, 2002

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

DO NOT WRITE HERE
OFFICE USE ONLY

EXHIBIT A

- Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
- See detailed instructions.
- Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 2 pages

EXAMINED BY 

FORM PA

CHECKED BY

☐ CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY**DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.****PREVIOUS REGISTRATION** Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼ If your answer is "no," go to space 7.a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.
Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

This work is based on, but significantly changed from, the original version entitled NASCAR RACING and it incorporates material from NASCAR RACING 2, NASCAR RACING 3 and NASCAR RACING 4.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

New and revised computer program and audiovisual material.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼THOMSON & THOMSON CO.
DA 061794**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/ZIP ▼Ronald A. Crawford
Sierra Entertainment, Inc.
3060 139th Ave. SE, #500
Bellevue, WA 98005

Area code and daytime telephone number ▶ (425) 638-5166

Fax number ▶ (425) 649-4919

Email ▶ ron.crawford@sierra.com

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one ▶

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Sierra Entertainment, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Eric V. Foeder, Vice President and Group Counsel

Date ▶ Feb. 15, 2002

Handwritten signature (X) ▼

Certificate
will be
mailed in
window
envelope
to this
address:

Name ▼

Sierra Entertainment, Inc. Attn. Ron A. Crawford

Number/Street/Apt. ▼

3060 139th Ave. SE, #500

City/State/ZIP ▼

Bellevue WA 98005

YOU MUST

- Complete all necessary spaces
- Sign your application in space 8

**SEND ALL 3 ELEMENTS
IN THE SAME PACKAGE:**

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

MAIL TO:Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000As of July 1, 1999,
the filing fee for
Form PA is \$30.*17 U.S.C. § 506(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.
June 1999—E.C.0007

PRINTED ON RECYCLED PAPER

U.S. GOVERNMENT PRINTING OFFICE: 1999-454-879/08

Execution Copy

ASSIGNMENT AGREEMENT

This Assignment Agreement (this "Agreement") is effective as of May 28, 2004 (the "Effective Date") and is between Papyrus Design Group, Inc., a Massachusetts corporation ("Assignor"), Sierra On-Line Inc., a Delaware corporation and the parent of Assignor (the "Parent") (each a "Seller" and collectively the "Sellers"), FIRST, L.L.C., a Delaware limited liability company ("Assignee"), and REDACTED a Delaware corporation, and a member of Assignee ("Assignee Member") (each a "Purchaser" and, collectively, the "Purchasers").

1. Definitions.

REDACTED

- e. "Game" means the PC game NASCAR Racing 2003 Season.
- f. "Game IP" means all intellectual property rights in the Game Technology, including all copyrights in the Game Technology, whether registered or unregistered.
- g. "Game Technology" means the PC-based racing simulation engine and related tools used in the Game, together with all patches and bug fixes made as of the Effective Date, and all related (i) data, text, compiler command files, build scripts, object libraries, scripts relating to the operation and maintenance thereof, application programming interfaces (API), graphical user interfaces (GUI), makefiles, protocols, specifications, database management code, data formats, utilities, methods of processing, software engines, platforms, encryption keys and other security features, 2D and 3D artwork, graphics, communications, animation, images, digital and/or audio clips or other content, (ii) contents of the "race", "psys", "gpl", "gpldata", "nl2", "nl2data", and "tools" Clearcase VOB's (Versioned Object Bases) from Assignor's source code control system, (iii) relevant instructions on building the object code thereof, all tools for creating cars, tracks, sounds and other individualized features, (iv) Documentation, (v) other data and/or information necessary to build the latest patched version of the Game and (vi) source code

REDACTED

and object code with respect to the foregoing, in each case,

REDACTED

2. **Assignment.** Effective on payment of the Purchase Price, Assignor hereby sells, assigns, conveys and otherwise transfers to Assignee all of Assignor's right, title and interest in and to the Game Technology and the Game IP (collectively, the "Assets").

REDACTED

REDACTED

8. Consideration. Assignee shall pay to Assignor the sum of (**REDACTED**) on the Effective Date of this Agreement (the "**Purchase Price**"). Assignee will be responsible for all sales taxes, excise taxes, value added taxes and other sales type of taxes (excluding taxes on Assignor's income) imposed by relevant tax authorities directly in connection with the sale of the Assets to Assignee under this Agreement. **REDACTED**

REDACTED

REDACTED

12. Representations and Warranties of Sellers. Except as individually represented and warrantied below by Assignor or Parent, each of the Sellers hereby represents and warrants to Assignee, as of the Effective Date, as follows:

REDACTED

REDACTED

REDACTED

g. Sufficiency. The Game Technology and the collectively include all source code and tools required to build the object code of the latest patched version of the Game.

REDACTED

REDACTED

16. Further Assurances. Assignor covenants and agrees that it will, upon the reasonable request of Assignee and at Assignee's cost and expense, execute and deliver, or cause to be executed or delivered, any and all documents provided by Assignee that may be necessary or desirable to perfect the sale, assignment, conveyance and transfer of the Assets hereunder.

REDACTED

REDACTED

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

FIRST, L.L.C. REDACTED Name: _____ Title: _____	PAPYRUS DESIGN GROUP, INC. Name: _____ Title: _____
REDACTED REDACTED Name: _____ Title: _____	SIERRA ON-LINE INC. Name: _____ Title: _____

MAY-25-2004 17:22

P.02/02

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

FIRST, L.L.C.	PAPYRUS DESIGN GROUP, INC.
	REDACTED
Name: _____ Title: _____	Name: _____ Title: _____
FMBC HOLDINGS, INC.	SIERRA ON-LINE INC.
	REDACTED
Name: _____ Title: _____	Name: _____ Title: _____

EULA

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(iii) host or provide matchmaking services for the Program or emulate or redirect the communication protocols used by Sierra in the network feature of the Program, through protocol emulation, tunneling, modifying or adding components to the

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10. Limitations on License. Nothing in this License Agreement shall preclude you from making or authorizing the making of another copy or adaptation of the Program provided, however, that (1) such new copy or adaptation is created as an essential step in your utilization of the Program in accordance with the terms of this License Agreement and for NO OTHER PURPOSE; or (2) such new copy or adaptation is for archival purposes ONLY and all archival copies are destroyed in the event of your Transfer of the Program, the Termination of this Agreement or other circumstances under which your continued use of the Program ceases to be rightful.

11. Miscellaneous. This License Agreement shall be deemed to have been made and executed in the State of California and any dispute arising hereunder shall be resolved in accordance with the law of California. You agree that any claim asserted in any legal proceeding by one of the parties against the other shall be commenced and maintained in any state or federal court located in the State of California, County of Los Angeles, having subject matter jurisdiction with respect to the dispute between the parties. This License Agreement may be amended, altered or modified only by an instrument in writing, specifying such amendment, alteration or modification, executed by both parties. In the event that any provision of this License Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be enforced to the maximum extent permissible and the remaining portions of this License Agreement shall remain in full force and effect. This License Agreement constitutes and contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements.

I hereby acknowledge that I have read and understand the foregoing License Agreement and agree that the action of installing the Program is an acknowledgment of my agreement to be bound by the terms and conditions of the License Agreement contained herein. I also acknowledge and agree that this License Agreement is the complete and exclusive statement of the agreement between Sierra and I and that the License Agreement supersedes any prior or contemporaneous agreement, either oral or written, and any other communications between Sierra and myself.

TPTCC GTS Car Physics

Installation:

Unzip the TPTCC_GTS_Series_v2.0.exe into your Nascar Racing 2003 Season directory. Double-click on the TPTCC_GTS_Series_v1.0.exe, and select the "Make New EXE" button. This installer will allow the user of this software the ability to copy your NR2003.exe (No_CD.exe will work), make the necessary changes, and rename it to "NR2003_GTS_Touring_Series_v2.0.exe". You must start NR2003 via the new executable for the new physics.

Included is a setup based on the GTS Car physics

Introduction:

By installing and launching NR2003 via this executable, the physics of the cars in the "TPTCC" mod (v2.0 or greater) will be altered. Instead of driving a 8-cyl 600+ horse-power monster, you will be behind the wheel of a slightly heavier weight car with more bottom-end torque but less overall horse power. The net result is a car that is slower through the corners, and slightly slower down the longer straights. All changes were made in an attempt to replicate a front-engine, high-torque V8, production based car like a well modified Dodge Viper or Corvette (Think Dale Jr's GTS Corvette in ALMS)

The changes are listed below:

500hp instead of 625hp (@ 70-clear)
 Lower RPM range power-band (5000-6000 estimated)
 Faster horse-power drop off once out of power band
 6900 RPM red-line
 2850lb instead of 2800lb
 20 gallon fuel capacity
 Minimum front/rear weight ratio 51% to front (front engine)
 Less ballast to adjust left/right
 Spoiler minimum of 60 degrees, maximum of 75 degrees (hi-drag)
 Front and Rear springs have a lower minimum spring rate
 Lower Front and Rear ride-heights
 Rear Camber is adjustable in increments of .1 degree up to +/- 3 degrees
 Steering Ratio now allows settings of 10:1 or greater

The GTS Physics were created for the purpose to race online with the TPTCC "TA" and the TPTCC "Touring Car" physics via IP servers. This allows for multi-class racing online with three separate physics on the track at the same time. For more information regarding multi-class online endurance racing, please visit <http://www.tmcathur.net/enduro.htm> or <http://sports.groups.yahoo.com/group/tpcc-endurance/>

Warnings:

You will not be able to join servers that are posted on the Sierra listings. A server may only be joined via IP connection. The new physics are only useable in the TPTCC mod, no others. The server does not need to be launched via this executable.

The user of this software takes all responsibility of creating a copy of the Nascar Racing 2003 Season executable file and the changes made to the file.

Special thanks to:

David Boyle, just because he is the man!
 The US Pits (www.theuspits.com)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) First, LLC v. Timothy McArthur
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ___ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- X II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ___ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 366, 370, 371, 380, 385, 450, 891.
- ___ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ___ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Irwin B. SchwartzADDRESS Petrie Schwartz LLP, 500 Boylston Street, Suite 1860, Boston, MA 02116TELEPHONE NO. 617-421-1800 (Ext. 32)

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

First, LLC, a Delaware Limited Liability Corporation

(b) County of Residence of First Listed Plaintiff Middlesex
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Irwin B. Schwartz, Esquire, Petrie Schwartz LLP, 500 Boylston Street, Suite 1860, Boston, MA 02116 (617-421-1800 (Ext. 32))

DEFENDANTS

McArthur, Timothy

County of Residence of First Listed Defendant Contra Costa, California
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

05 10544 JLT

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|--|---|--|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input checked="" type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS- Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 17 U.S.C. § 501

Brief description of cause:

Actual and threatened violation of Plaintiff's Copyrights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/21/2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE